

AMENDED IN ASSEMBLY AUGUST 1, 2016
AMENDED IN ASSEMBLY AUGUST 18, 2015

SENATE BILL

No. 500

Introduced by Senator Hertzberg

February 26, 2015

An act to add and repeal Sections 17952.7 and 18501.5 of the Revenue and Taxation Code, and to ~~add and repeal Section 13020.5~~ *amend Section 13006* of the Unemployment Insurance Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 500, as amended, Hertzberg. Personal income taxes: nonresident de minimis income.

Existing law, the Personal Income Tax Law, imposes a tax on the entire taxable income of a resident taxpayer subject to that law, and provides for a specified treatment of the income of nonresidents. For purposes of computing the taxable income, the gross income of a nonresident includes only the gross income from sources within this state. Existing law requires every taxpayer subject to tax under the law to file a return with the Franchise Tax Board, stating specifically the items of the gross income from all sources and the deductions and credits allowable, as provided.

This bill would provide, for purposes of computing the taxable income of a nonresident, that the gross income of a nonresident from sources within this state does not include "de minimis income," defined as compensation subject to specified withholding if the nonresident has no other income from sources within this state, is present in this state to perform employment duties on behalf of an employer and any other related person for not more than ~~20~~ 9 calendar days during the taxable

year in which the compensation is received, if the compensation is received on or after January 1, ~~2016~~, 2017, for any part of the taxable year during which the taxpayer was not a resident of this state, and the nonresident's state of residence provides a substantially similar exclusion or does not impose an individual income tax. Except as specified, the bill would provide that a nonresident whose only income from sources in this state is compensation excluded pursuant to these provisions has no personal income tax liability and is not required to file a return. The bill would repeal these provisions on January 1, 2021.

Existing law requires every employer who pays wages to a nonresident employee for services performed in this state to deduct and withhold from those wages, except as provided, *the amount of specified income taxes*. ~~taxes reasonably estimated to be due from the inclusion of those wages in the employee's gross income.~~

~~This bill, until January 1, 2021, would provide that no amount is required to be deducted or withheld from compensation paid to a nonresident for employment duties performed in this state if that compensation is excluded from provide, for those tax withholding purposes, that gross income excludes de minimis income excluded from a nonresident's income subject to tax pursuant to the aforementioned provisions. The bill would repeal these provisions on January 1, 2021.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17952.7 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17952.7. (a) For purposes of computing "taxable income of a
- 4 nonresident or part-year resident" under paragraph (1) of
- 5 subdivision (i) of Section 17041, gross income of a nonresident,
- 6 as defined in Section 17015, from sources within this state shall
- 7 not include "de minimis income" received on or after January 1,
- 8 ~~2016~~, 2017, for any part of the taxable year during which the
- 9 taxpayer was not a resident of this state.
- 10 (b) For purposes of this section, the following definitions shall
- 11 apply:
- 12 (1) "De minimis income" means compensation *otherwise* subject
- 13 to withholding under Chapter 2 (commencing with Section 13020)
- 14 of Division 6 of the Unemployment Insurance Code, ~~without regard~~

1 ~~to Section 13020.5 of the Unemployment Insurance Code, Code~~
2 that is received by a nonresident if the following apply:

3 (A) The nonresident has no other income from sources within
4 this state for the taxable year in which the compensation was
5 received.

6 (B) The nonresident is present in this state to perform
7 employment duties on behalf of an employer and any other related
8 person for not more than 20 9 calendar days during the taxable
9 year in which the compensation is received. For purposes of this
10 subparagraph, presence in this state for any part of a day constitutes
11 presence in this state for that day unless such presence is solely
12 for purposes of transit through the state.

13 (C) The nonresident's state of residence provides a substantially
14 similar exclusion or does not impose an individual income tax.

15 (2) "Related person" means a person that, with respect to the
16 employer during all or any portion of the taxable year, is one of
17 the following:

18 (A) A related entity.

19 (B) A member of a commonly controlled group, within the
20 meaning of Section 25105.

21 (C) A person to or from whom there is attribution of stock
22 ownership in accordance with subdivision (e) of Section 25105.

23 (D) A person that, notwithstanding its form of organization,
24 bears the same relationship to the employer as a person described
25 in subparagraphs (A), (B), or (C), inclusive.

26 (3) "Related entity" means any of the following:

27 (A) A stockholder who is an individual, or a member of the
28 stockholder's family set forth in Section 318 of the Internal
29 Revenue Code, relating to constructive ownership of stock, if the
30 stockholder and the members of the stockholder's family own,
31 directly, indirectly, beneficially, or constructively, in the aggregate,
32 at least 50 percent of the value of the employer's outstanding stock.

33 (B) A stockholder, or a stockholder's partnership, limited
34 liability company, estate, trust, or corporation, if the stockholder
35 and the stockholder's partnerships, limited liability companies,
36 estates, trusts, and corporations own directly, indirectly,
37 beneficially, or constructively, in the aggregate, at least 50 percent
38 of the value of the employer's outstanding stock.

39 (C) A corporation, or a party related to the corporation in a
40 manner that would require an attribution of stock from the

1 corporation to the party or from the party to the corporation under
2 the attribution rules of the Internal Revenue Code if the employer
3 owns, directly, indirectly, beneficially, or constructively, at least
4 50 percent of the value of the corporation's outstanding stock. The
5 attribution rules of the Internal Revenue Code shall apply for
6 purposes of determining whether the ownership requirement of
7 this definition has been met.

8 (c) This section shall not apply to compensation received by
9 any of the following:

10 (1) An individual who is a professional athlete or member of a
11 professional athletic team.

12 (2) An individual who is a professional entertainer who performs
13 services in the professional performing arts.

14 (3) An individual of prominence who performs services for
15 compensation on a per-event basis.

16 (4) An individual who is identified as a key employee, within
17 the meaning of Section ~~416(i)(1)(A)(i)~~ 416(I)(1)(A)(i) of the
18 Internal Revenue Code, for the taxable year immediately preceding
19 the current taxable year.

20 (d) This section shall remain in effect only until January 1, 2021,
21 and as of that date is repealed.

22 SEC. 2. Section 18501.5 is added to the Revenue and Taxation
23 Code, to read:

24 18501.5. (a) (1) Notwithstanding Section 18501 and except
25 as provided in paragraph (2), a nonresident whose only income
26 from sources in this state is compensation that is excluded pursuant
27 to Section 17952.7 has no tax liability under Section 17041 and is
28 not required to file a return.

29 (2) Upon request by the Franchise Tax Board, a nonresident
30 may be required to file an information return.

31 (b) This section is applicable to the determination of an
32 individual income taxpayer's filing requirement and has no
33 application to the imposition of, or jurisdiction to impose, a tax
34 under Part 10 (commencing with Section 17001) or any other tax
35 on any taxpayer.

36 (c) Nothing contained in this section is intended to have any
37 bearing on the sourcing rules for determining the taxability by this
38 state of deferred compensation earned by performing services in
39 this state during any portion of the applicable vesting period,
40 whether by stock option, restricted stock units, or any other means,

1 based on a formula comparing the number of working days in this
2 state to the number of working days elsewhere, and no de minimis
3 period, as described in Section 17952.7, applies to those
4 determinations.

5 (d) This section shall remain in effect only until January 1, 2021,
6 and as of that date is repealed.

7 ~~SEC. 3. Section 13020.5 is added to the Unemployment~~
8 ~~Insurance Code, to read:~~

9 ~~13020.5. (a) Notwithstanding Section 13020, no amount is~~
10 ~~required to be deducted or withheld from compensation paid to a~~
11 ~~nonresident for employment duties performed in this state if that~~
12 ~~compensation is excluded from income subject to tax pursuant to~~
13 ~~Section 17952.7 of the Revenue and Taxation Code. The number~~
14 ~~of days a nonresident employee is present in this state for purposes~~
15 ~~of Section 17952.7 of the Revenue and Taxation Code shall include~~
16 ~~all such days the nonresident employee is present and performing~~
17 ~~employment duties in the state on behalf of the employer and any~~
18 ~~other related person, as defined in subdivision (b) of Section~~
19 ~~17952.7 of the Revenue and Taxation Code. For purposes of this~~
20 ~~subdivision, presence in this state for any part of a day constitutes~~
21 ~~presence in this state for that day unless such presence is solely~~
22 ~~for purposes of transit through the state.~~

23 ~~(b) An employer that has erroneously applied the exception~~
24 ~~provided by this section solely as a result of miscalculating the~~
25 ~~number of days a nonresident employee is present in this state to~~
26 ~~perform employment duties shall not be subject to a penalty~~
27 ~~resulting from the erroneous application of the exception provided~~
28 ~~in this section if one of the following applies:~~

29 ~~(1) The employer relied on a regularly maintained time and~~
30 ~~attendance system that satisfies both of the following conditions:~~

31 ~~(A) The system requires the employee to record, on a~~
32 ~~contemporaneous basis, his or her work location each day the~~
33 ~~employee is present in a state other than the state of residence or~~
34 ~~the state where services are considered performed under the~~
35 ~~Unemployment Insurance Code.~~

36 ~~(B) The system is used by the employer to allocate the~~
37 ~~employee's wages between all taxing jurisdictions in which the~~
38 ~~employee performs duties.~~

39 ~~(2) The employer does not maintain a time and attendance~~
40 ~~system described in paragraph (1) and relied on employee travel~~

1 records that the employer requires the employee to maintain and
2 record on a regular and contemporaneous basis.

3 ~~(3) The employer does not maintain a time and attendance~~
4 ~~system described in paragraph (1), does not require the maintenance~~
5 ~~of employee records described in paragraph (2), and relied on~~
6 ~~travel expense reimbursement records that the employer requires~~
7 ~~the employee to submit on a regular and contemporaneous basis.~~

8 ~~(e) This section establishes an exception to withholding and~~
9 ~~deduction requirements and has no application to the imposition~~
10 ~~of, or jurisdiction to impose, this or any other tax on any employee.~~

11 ~~(d) This section shall remain in effect only until January 1, 2021.~~

12 *SEC. 3. Section 13006 of the Unemployment Insurance Code*
13 *is amended to read:*

14 13006. “Gross income” means all compensation for services
15 including fees, commissions, and similar items, except as otherwise
16 provided by this division. “Gross income” shall specifically include
17 those items relating to compensation specified by Article 2
18 (commencing with Section 17081) of, and shall specifically exclude
19 those items relating to compensation specified by Article 3
20 (commencing with Section 17131) of, Chapter 3 of Part 10 of
21 Division 2 of the Revenue and Taxation Code. *Until January 1,*
22 *2021, “gross income” shall also exclude de minimis income*
23 *excluded from the gross income of a nonresident under Section*
24 *17952.7 of the Revenue and Taxation Code.*